

US Serial No. 10/518800
Page 4 of 8

Remarks:

Regarding the claims:

Claims 1-10 are pending. No amendments to the claims are entered in this response.

Regarding the rejection of claims 1-10 under 35 USC 103(a) as allegedly being unpatentable in view of U.S. Patent No. 6,669,763 to Ghodoussi et al. (hereinafter "Ghodoussi") in view of EP 0392316 to Leacock:

Applicants respectfully traverse the Examiner's rejection of the indicated claims in view of Ghodoussi and Leacock.

At the outset the applicant notes that the independent claim, claim 1, has been amended to recite (in pertinent part)

" A moist wipe for cleaning a wooden surface, the wipe comprising a sheet material pre-moistened with a liquid composition, said liquid composition being an aqueous emulsion *consisting essentially of:* " (Emphasis added.)

The Examiner is respectfully reminded of the US Manual of Patent Examining Procedure, Section 2111.03. which in pertinent part reads:

The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976) (emphasis in original) (Prior art hydraulic fluid required a dispersant which appellants argued was excluded from claims limited to a functional fluid "consisting essentially of" certain components. In finding the claims did not exclude the prior art dispersant, the court noted that appellants' specification indicated the claimed composition can contain any well-known additive such as a dispersant, and there was no evidence that the presence of a dispersant would materially affect the basic and novel characteristic of the claimed invention. The prior art composition had the same basic and novel characteristic (increased oxidation resistance) as well as additional enhanced detergent and dispersant characteristics.). "A 'consisting essentially of' claim

US Serial No. 10/518800
Page 5 of 8

occupies a middle ground between closed claims that are written in a 'consisting of' format and fully open claims that are drafted in a 'comprising' format." *PPG Industries v. Guardian Industries*, 156 F.3d 1351, 1354, 48 USPQ2d 1351, 1353-54 (Fed. Cir. 1998). See also *Atlas Powder v. E.I. duPont de Nemours & Co.*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984); *In re Janakirama-Rao*, 317 F.2d 951, 137 USPQ 893 (CCPA 1963); *Water Technologies Corp. vs. Calco, Ltd.*, 850 F.2d 660, 7 USPQ2d 1097 (Fed. Cir. 1988).

The Patent Office alleges that Ghodoussi teaches all of the features of the present claims except a cleaning composition being disposed on a sheet material (see page 3 of the Office Action). The Patent Office introduces Leacock as allegedly teaching a wipe comprising a non-woven substrate impregnated with a liquid polish composition. The Patent Office alleges that it would have been obvious to combine the cleaning composition of Ghodoussi with the method of production of Leacock to form a wipe that provides a layer that is water-resistant to reduce the formation of water stains on wood surfaces in an affordable and convenient fashion such as a disposable wet wipe. Applicant respectfully disagree with the allegations.

Independent claim 1 as now amended, is intended to exclude Ghodoussi's necessary constituents which require the presence of two 'reactive surfactants' namely a first charged surfactant (anionic or cationic) and a second charged surfactant, (cationic or anionic) which reacts and neutralizes the charges of the surfactants, and thus changes the nature of the wax suspension formed. This is disclosed by Ghodoussi at the following excerpt of col. 5 of his published patent which reads:

US Serial No. 10/518800
Page 6 of 8

Subsequent to formation of the emulsion, a second surfactant is added to the emulsion. This second surfactant is an anionic or cationic surfactant, and is selected so that the first and second surfactants have opposite charges. More specifically, if the first surfactant is an anionic surfactant, the second surfactant is cationic. If the first surfactant is a cationic surfactant, the second surfactant is anionic. The second surfactant may be added directly to the emulsion, or the second surfactant may be dissolved in an aqueous solution, and the wax emulsion may be mixed with the aqueous solution of the second surfactant.

The second surfactant reacts with the first surfactant in the primary emulsion to neutralize the charge on the first surfactant. By neutralizing the surfactant in this fashion, a wax suspension is created surrounded by particles of a neutralized surfactant that has been created in situ. This neutralized surfactant is very mild, as compared to the original surfactants in the composition, and keeps the wax particles from agglomeration and prohibits formation of hard particles. This wax suspension, the secondary emulsion, is very hydrophobic in nature and the suspended wax particles attach to any substrate that is less polar than water such as most automotive surfaces and other surfaces mentioned earlier, resulting in a durable water-repellant finish.

As is evident from the foregoing, the key technical feature provided by Ghodoussi and which distinguishes it from the prior art is the provision of the reaction product from his two surfactants, one necessarily being a cationic surfactant, the other necessarily being an anionic surfactant which are neutralized in the presence of the wax, and this neutralized material/product alters the nature of the composition and the wax particles in a very specific manner, which is wholly dependent upon the presence of this specific neutralized material/product.

Returning to applicant's claims as presently amended, it is evident therefrom that such excludes the reaction product from his two surfactants, one necessarily being a cationic surfactant, the other necessarily being an anionic surfactant of Ghodoussi. Logically then, absent Ghodoussi's neutralized material/product, applicant's compositions are technically and patentably distinguishable from Ghodoussi's wax emulsion as well.

US Serial No. 10/518800
Page 7 of 8

It is the applicant's view that in view of the above, additional consideration of the Leacock does not address or overcome the limitation of Ghodoussi and thus would not render the currently amended claims as obvious over the combined Ghodoussi and Leacock reference. Leacock discloses wipes comprising between 0.8% and about 12.1% silicone containing compounds and the examples of Leacock contain 2.48% to 4.96% silicone containing compounds.

Applicants submit that modifying Ghodoussi with Leacock would not lead to the present invention as any combination of Ghodoussi and Leacock would – at best—suggest the use of a wipe as a substrate for Ghodoussi's composition. However for reasons discussed above, Ghodoussi fails to teach or suggest the composition as presently claimed by the applicant, and the addition of Leacock does not address or overcome the limitations of Ghodoussi.

Because these features of independent claim 1 are not taught or suggested by Ghodoussi and Leacock, taken singly or in combination, these references would not have rendered the features of claims 1-10 as presented in this paper as being obvious to one of ordinary skill in the art.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience. The early issuance of a *Notice of Allowability* is solicited.

US Serial No. 10/518800
Page 8 of 8

RECEIVED
CENTRAL FAX CENTER
MAR 02 2009

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

Andrew N. Parfomak

Andrew N. Parfomak, Esq.
Reg. No. 32,431
Norris, McLaughlin & Marcus P.A.
875 Third Avenue
New York, NY 10017

02 March 2009

Date:

Tel: 212 808-0700

CERTIFICATION OF TELEFAX TRANSMISSION:

I hereby certify that this paper is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571-272-8300 on the date shown below:

Allyson Ross

Allyson Ross

02 March 2009

Date

C:\ANPCMB\102792\383\Amendment02.doc